

**A
HANDBOOK
FOR
VIRGINIA
NOTARIES PUBLIC**



Published by the
Office of the
Secretary of the Commonwealth
July 1, 2003
Notary Public Division Post Office Box 1795
Richmond, Virginia 23218-1795
E-Mail: socmail@governor.virginia.gov
Tel. (804) 786-2441
Fax (804) 371-0017

NOTARY PUBLIC HANDBOOK

TABLE OF CONTENTS

THE NOTARY'S FUNCTION

QUALIFICATIONS FOR APPOINTMENT

OBTAINING A COMMISSION

BONDS AND INSURANCE

RESIGNATION

THE NOTARY'S POWERS

TERMS OF OFFICE

JURISDICTION

NOTARY'S RESPONSIBILITY

REQUIRED INFORMATION

ACKNOWLEDGMENTS

Certificate of Acknowledgment

Jurat

Certified copy of an original

OATHS

FEES

SEALS

CONFLICTS OF INTEREST

VIOLATIONS OF NOTARY LAW

Official Misconduct

Removal from Office

Civil Liability

Criminal Liability

Liability of the Notary's Employer

Impersonation of a Notary

CODE OF VIRGINIA

NOTARY PUBLIC HANDBOOK

THE NOTARY'S FUNCTION

A notary acts as an official, unbiased witness to the identity and signature of the person who comes before the notary for a specific purpose. The person may be taking an oath, giving oral or written testimony, or signing or acknowledging his or her signature on a legal document. In each case, the notary attests that certain formalities have been observed.

The key function is to be **certain** that the person appearing before the notary is who that person claims to be.

Virginia law defines certain “notarial acts” which a notary is empowered to perform. **Notaries must constantly be aware that every notarial act affects the legal rights of others. Carelessness or negligence by the notary may injure these rights.**

A notary who fails to perform notarial acts in accordance with the law may be sued for damages caused by their official misconduct. The employer of a notary may also be liable for the notary's misconduct under certain conditions described later in this handbook.

QUALIFICATIONS FOR APPOINTMENT

Under the laws of Virginia, the Governor may appoint an unlimited number of notaries public. A notary must be: (1) at least eighteen years old and (2) must be able to read and write the English language. Because of a U. S. Supreme Court decision in 1984 (Bernal v. Fainter, 467 US 216), United States citizenship is no longer required for Virginia notaries.

Non-residents of Virginia may be appointed as notaries if they are regularly employed in the state and perform notary services in connection with their employment. A non-resident notary who ceases to be regularly employed in Virginia must surrender his or her commission. A resident of another state, however, may serve as an out-of-state commissioner authorized to take acknowledgments.

OBTAINING A COMMISSION

Applications for appointment as a notary public are available from the Clerk of every Circuit Court, on the Office of the Secretary of the Commonwealth's website at <http://www.commonwealth.virginia.gov/Notary/notary.cfm> and from the Office of the Secretary of the Commonwealth.

To become a commissioned notary, a completed application, along with a fee of \$35, must be sent to the Office of the Secretary of the Commonwealth.

Each notary commission is sent to the Clerk of the Circuit Court in which the applicant has elected to take the oath of office. A notice is sent to each applicant, advising that his or her commission has been issued.

NOTARY PUBLIC HANDBOOK

It is the applicant's responsibility to go to the Circuit Court to claim his or her commission and take the oath of office. At that time, the applicant will be required to pay a fee of \$10 to the Clerk.

If a notary commission is not claimed within sixty days from its issuance, it becomes invalid. Failure to claim the commission within sixty days is not excused for ANY REASON, including non-receipt of the notice. Thereafter, if the applicant wishes to be a notary, a new application and a new fee must be submitted.

An applicant, who has not received notice within six weeks to seven weeks of mailing their application to the Office of the Secretary of the Commonwealth, should call the Clerk of Court to verify if the commission has been received. If it has not, the applicant should contact the Office of the Secretary of the Commonwealth.

BONDS AND INSURANCE

Virginia notaries are not required to post a bond in order to obtain their commission. Because of the changes made in the civil liability of notaries by the Virginia Notary Act of 1980, all notaries may wish to consider liability insurance for their own protection. Notaries who perform notarial duties in connection with their employment should consult their employer to determine whether they are covered, or could be covered, by the employer's policy.

RESIGNATION

A notary who wishes to resign may do so by sending a letter of resignation and his or her commission to the Secretary of the Commonwealth.

A Virginia notary who moves outside of the state **MUST** surrender his or her commission and notarial seal to the Secretary. However, if the notary continues to be regularly employed in Virginia, he or she may continue to serve by advising the Secretary of the Commonwealth of such employment.

THE NOTARY'S POWERS

A notary has the power to perform various official acts, known as "notarial acts". *The Code of Virginia* specifies five basic notarial acts:

1. Taking Acknowledgments
2. Administering Oaths
3. Certifying affidavits
4. Certifying depositions
5. Certifying "true copies" of documents

NOTARY PUBLIC HANDBOOK

Each of these acts has a specific purpose and should be performed with care. The Uniform Recognition of Acknowledgments Act (Section 55-118.1 through 55-121 of the *Code of Virginia*) outlines the format a notary should use for various acknowledgments.

Virginia notaries are **not** authorized to certify true copies of birth, death, or marriage certificates. Only the Division of Vital Records/Statistics may perform such a certification. Virginia notaries are also not authorized to perform marriage ceremonies.

TERMS OF OFFICE

A notary's commission is for a term of four years, expiring on the last day of the month in which the notary was born. The commission may be renewed every fourth year by filing a new application with the Secretary of the Commonwealth. A reminder notice to renew a notary commission will not be sent. If you are a notary whose commission will expire in January, please submit your application the first of January. Applications received in December will be processed before January, and hence the commission will expire one year less than anticipated.

After their term has expired, notaries must not act as such unless a new commission has been obtained. Acting under an expired commission may constitute a criminal offense.

JURISDICTION

All Virginia notaries are notaries at-large and have authority to perform all notarial acts anywhere within the Commonwealth of Virginia.

Virginia notaries have limited powers in performing notarial acts outside the Commonwealth of Virginia. However, documents notarized out of the Commonwealth by Virginia notary publics **must** be recorded in Virginia.

THE NOTARY'S GREATEST RESPONSIBILITY

Before performing a notarial act, a notary must be **CERTAIN** of the identity of each person whose signature will be notarized. A notary is required to exercise a **HIGH DEGREE OF CARE** in determining the identity of any person whose identity is the subject of a notarial act. Unless such person is known by the notary, identity shall be ascertained by examination of one or more of the following documents: a United States Passport, a certificate of United States citizenship, a certificate of naturalization, an unexpired foreign passport, an alien registration card with photograph, a state-issued driver's license, state-issued identification card, or a United States military card.

A notary must never accept any signature as genuine on the word of a third party. An acknowledgment must be made by the person whose signature is the subject of the acknowledgment. Oaths must be administered by a notary for any sworn document and the person giving the oath must appear, in person, before the notary who administers the oath. A notary who fails to establish the identity of a person runs the risk of being sued for negligence or malfeasance in office. The only safe

NOTARY PUBLIC HANDBOOK

practice is to **REFUSE** to notarize any signature unless the identity of the signer is clearly established.

In taking an acknowledgment or administering an oath, the person whose act is the subject of the notarial act must personally appear before the notary.

REQUIRED INFORMATION

Every notarial act must contain five items of standard information:

- 1. Notarial statement**
- 2. The date of the notarial act**
- 3. The place of the notarial act**
- 4. The expiration date of the notary's commission**
- 5. Notary's signature**

Each of these items is required by law and are extremely important. The notary must be accurate in providing this information.

A notarial statement must identify the specific notarial act that has been performed (acknowledgment, oath, certificate, etc.).

The date and location of the notarial act must be clearly indicated. Usually, the language of a notarial act contains a place for this information. When it does not, the best place to put the date is immediately above the place where the notary will sign, using language such as:

“Given under my hand this ____ day of _____, 20__.”

Notary Public

Both the state and the city or county in which the act was performed must appear. In most cases, this information appears above the language of the notarial act. If a form or certificate lacks space for this information, the notary must provide it somewhere on the form or certificate.

The date of expiration is required and generally appears after the signature of the notary in this form:
“My commission expires, _____, 20__.”

Occasionally it is necessary for the Office of the Secretary of the Commonwealth to certify that a notary is properly commissioned to serve in Virginia. A notary whose name is legally changed during his or her term must indicate in writing the name in which the commission was issued.

For example, if Mary Jane Smith, a notary public commissioned on July 1, 2001, changed her legal name to Mary Smith Jones, she must indicate on all notarial acts the original name in which her commission was issued. Therefore the following language should appear:

**“My commission expires, this ____ day of ___, 20__.
I was commissioned a notary public as Mary Jane Smith.”**

NOTARY PUBLIC HANDBOOK

By using this additional language, Mrs. Jones will avoid confusion over her ability to serve as a notary. When she reapplies for a commission, she may do so in her new name. If you have a notary seal issued in your old name, continue to use that seal until your notary commission expires.

A notarial act requires the original signature of the notary. Signature stamps and other facsimiles or photocopies do not satisfy this requirement.

If a notary's handwriting is not legible, it is good practice to add his/her name, in printed form, under the signature. Please note that dark blue or black ink is preferred for recording purposes in court.

ACKNOWLEDGMENTS

*Suggested forms:

A) Certificate of Acknowledgment:

City/County of _____

Commonwealth of Virginia

The foregoing instrument was acknowledged before me this ____ day of ____, 20 ____ by

(Name of person seeking acknowledgment)

Notary Public

My commission expires: _____

B) Jurat (requires that an oath be administered by the notary- See OATHS):

City/County of _____

Commonwealth of Virginia

The foregoing instrument was subscribed and sworn
before me this ____ day of ____, 20 ____ by

(name of person seeking jurat)

Notary Public

My commission expires: _____

C) Certified copy of an original:

City/County of _____

Commonwealth of Virginia

I certify this to be a complete, full, true and exact reproduction of the original document.

NOTARY PUBLIC HANDBOOK

Certified this _____ day of _____, 20 _____

Notary Public

My commission expires: _____

NOTE: Specific statutory forms are shown beginning Code Section 55-118.6.

OATHS

For any notarial act that includes the words “*sworn*” or “*affirm*,” an oath must be administered by a notary. In administering the oath, the notary **MUST** require that the person taking the oath swear or affirm that the sworn statement is true and correct to the best of that person’s knowledge.

FEES

By law, a notary is not required to charge a fee. However, he or she may charge up to \$3.00 for each notarial act performed.

The only other payment a notary may request is actual travel expenses if the notary is required to travel away from home or office to perform the notarial act. In this case, the notary and client must agree on the payment to be made.

An employer may require a notary to perform notarial acts in connection with the notary’s employment without charging a fee for such notarial acts. If a fee is charged, however, an employer may not require that the fee be surrendered to the employer.

SEALS

Virginia law does not require a notary to own a seal or use a seal on any document. However, most Virginia notaries use seals as a matter of custom. If a seal is used, it is recommended that the notary seal be imprinted or stamped just below the notarial statement. Care should be taken to not obscure the signatures or other parts of the document.

Moreover, if a notary expects to notarize documents to be used outside of the Commonwealth or to be presented to federal agencies, he or she should be aware that many states and some federal agencies require a seal before they will accept the validity of the notarial act.

Notarial seals must be ordered through a private seal manufacturer. The Office of the Secretary of the Commonwealth does not make or sell seals.

CONFLICTS OF INTEREST

Notaries may not perform any notarial act, which presents a conflict between their personal interest and their official duty.

NOTARY PUBLIC HANDBOOK

Under the Virginia Notary Act, a notary may not perform any notarial act with respect to any document if:

The notary is a party to the document

The notary's spouse is a party to the document

The notary or his or her spouse has a "direct beneficial interest" in the document

Notaries should not notarize any document when there is any possibility that the contents of the document will benefit them or their spouse. Notaries may notarize wills in which the notary is fiduciary. Notaries must NEVER notarize wills in which they are named beneficiaries. If you are uncertain about the difference, please consult an attorney before notarizing.

Regardless of whether any beneficial or other interests exist, a notary may never take his or her own acknowledgment, oath, affidavit, or deposition.

VIOLATIONS OF NOTARY LAW

Official Misconduct

Any violation of the Virginia Notary Act by a notary constitutes "official misconduct."

Removal from Office

The Secretary of the Commonwealth may remove any notary from office for official misconduct, or for other specific reasons, including:

- 1. Falsifying an application for appointment**
- 2. Being convicted of a felony anywhere in the United States**
- 3. Misleading the public as to the powers of a notary**
- 4. Being convicted of the unauthorized practice of law**

The most frequent charge of official misconduct involves a notary's failure to require the personal appearance of an individual before the notary when acknowledging that person's signature.

In cases where a notary is charged with official misconduct or other grounds for removal, the Secretary of the Commonwealth is empowered to conduct hearings.

During an investigation conducted by the Secretary, a notary may be suspended from notarial duties. If a notary is found guilty of official misconduct or is otherwise subject to removal, the Secretary may discipline the notary by reprimand, suspension from practice, or removal from office.

A notary removed from office is disqualified from being reappointed in Virginia for 20 years.

A court may review the findings of the Secretary of the Commonwealth if an appeal is made within 30 days of the Secretary's action.

Civil Liability

A notary may be sued for any improper or negligent act, which causes injury to another person.

Notaries must keep in mind that they are acting as official witnesses to the identity and actions of the person who appears before them. The public is entitled to assume that the notary has acted responsibly and according to law.

Criminal Liability

Any notary, who knowingly and willfully commits official misconduct under the Virginia Notary Act, may be convicted of a misdemeanor.

Notaries who intentionally use their powers to perpetrate a fraud or to embezzle or steal from another may be found guilty of a felony.

A notary who knowingly makes a false oath or certificate may be guilty of perjury.

Liability of the Notary's Employer

The employer of a notary may be civilly or criminally liable for certain acts.

The employer may be liable for damages caused by the notary's official misconduct if:

The misconduct was performed as part of the notary's employment

The employer knew about the misconduct, or should have known about it

Any employer who encourages, threatens, or otherwise intentionally causes an employee to violate the notary laws may be found guilty of a misdemeanor.

Impersonation of a Notary

If a person who is not a notary attempts to notarize a document, or otherwise acts as a notary without authority, the impersonator may be found guilty of felony charges.

It should be noted that notaries whose commissions have expired and persons who have not yet received a commission do not have authority to act as a notary. A valid commission is necessary to perform any notarial act.

CODE OF VIRGINIA

Virginia Notary Act of 1980 With Revisions

Chapter 1 General Provisions

Section 47.1.1 Short title

This title may be cited as the “Virginia Notary Act.” (1980, c. 580)

Section 47.1.2 Definitions

As used in this title, unless the context demands a different meaning:

1. “Notariâl act” shall mean any official act performed by a notary under Section 47.1-12 or Section 47.1-13 of this Code or as otherwise authorized by law.
2. “Oath” shall include “affirmation.”
3. “Official misconduct” means any violation of this title by a notary, whether committed knowingly, willfully, recklessly or negligently.
4. “Secretary” means the Secretary of the Commonwealth of Virginia.
5. “State” includes any state, territory, or possession of the United States. (1980, c. 580)

Chapter 2 Appointment

Section 47.1-3 Power of appointment

The Governor may appoint in and for the Commonwealth, as many notaries as to him shall seem proper. (Code 1950, Section 47-2; 1962, p. 287; 1972, c. 824; 1976, c. 559; 1979, c. 14; 1980, c. 580)

Section 47.1-4 Qualifications for appointment

Each person appointed and commissioned as a notary shall be (i) at least eighteen years of age; and (ii) able to read and write the English language. No person who has ever been convicted of a felony under the laws of the United States or this Commonwealth, or the laws of any state, shall qualify to be appointed and commissioned as a notary public unless such person has been pardoned for such felony or has had his rights restored. A nonresident of Virginia may be appointed only if he is regularly employed in this Commonwealth and if such appointment will be necessary or useful to him in such employment. A member of the armed services of the United States shall be eligible for appointment and commission as a notary notwithstanding the provisions of Section 2.2-2800 (Code 1950, Sections 47-2, 47-3; 1972, c. 824; 1976, c. 559; 1979, c. 14; 1980, c. 580; 1983, c. 435; 1986, c. 561; 1989, c. 163).

Section 47.1-5 Application; references

No person shall be appointed a notary public pursuant to this chapter until he submits an application to the Secretary of the Commonwealth, in a form prescribed by the appointing authority, which shall include the following:

1. The oath of the applicant, signed and sworn before some officer authorized by law to administer oaths, that the answers to all questions on the application are true and complete to the best of his knowledge and that he is qualified to be appointed and commissioned as a notary public.
2. Endorsements from two registered voters of this Commonwealth, stating that, to the best of the endorser's knowledge, the applicant is a person of sound moral character and is possessed of all the qualifications for appointment set forth in this chapter.
3. A statement signed by any judge, clerk or deputy clerk of any court of this Commonwealth; or by any Commonwealth's Attorney or an Assistant Commonwealth's Attorney; any member of the General Assembly; the Attorney General or any of his assistants, that such official has examined the application and recommends the applicant for appointment.
4. An application fee is set forth in Section 2.2-409; however, such fee shall be waived for an application filed by a clerk or deputy clerk of a circuit, or general district court. (Code 1950, Sections 47.2; 1962, p. 687; 1976, c. 559; 1979, c. 14; 1980, c. 580; 2001, c. 488; 2002, c.832)

Section 47.1-6, 47.1-7: Reserved

Section 47.1-8 Commission to be issued, etc.

Upon receipt of a completed application, proper endorsements and the correct fee, the Secretary, if satisfied the applicant is qualified to be appointed and commissioned as a notary public, shall prepare a notary commission for the applicant and forward the commission to the clerk of the circuit court in which the applicant shall elect to qualify. The Secretary shall thereupon notify the applicant that the commission has been granted and where and how it may be secured. (Code 1950, Section 47-2; 1962, p. 687; 1976, c. 559; 1979, c. 14; 1980, c. 580.)

Section 47.1-9 Notary Oath; duties of clerks

Before receiving his commission, each person appointed a notary must appear before the clerk of the circuit court to which his commission has been sent and make oath as follows:

"I,_____, solemnly swear (or affirm) under penalty of perjury, that I have carefully read the notary laws of this Commonwealth, and am familiar with their provisions, that I will uphold the Constitution of the United States and the Constitution and laws of the Commonwealth of Virginia; and that I will faithfully perform, to the best of my ability, the duties of the office of notary public."

NOTARY PUBLIC HANDBOOK

Such oath shall be signed by the applicant and attested by the clerk. The clerk shall thereupon issue to the applicant his commission as notary public. Within fourteen days of such qualification, the clerk shall certify the fact of such qualification to the Secretary of the Commonwealth.

No person shall be permitted to qualify who does not appear before the clerk within sixty days of his appointment. The clerk of each circuit court shall, at least once each month, return to the Secretary all commissions, which have not been claimed within such sixty-day period, and the Secretary shall forthwith cancel the same. (1980, c. 580)

Section 47.1-10 Records of the Secretary

The Secretary of the Commonwealth shall keep a book stating the names of all notaries public and the dates of their appointment and qualification. The Secretary shall also retain a specimen of the signature of each notary commissioned pursuant to this chapter. The specimen may be retained in photographic form.

The Secretary shall also be required to retain the completed applications of persons seeking appointment as notary public for a period of three months after their receipt; provided, however, that he shall retain the applications of persons refused for appointment for not less than four years. (Code 1950, Section 47-2; 1962, p. 687; 1976, c. 559; 1979, c. 14; 1980, c. 580)

Section 47.1-11 Handbook

The Secretary shall prepare, from time to time, a handbook for notaries public, which shall contain the provisions of this title and such other information as the Secretary, shall deem useful. Copies of the handbook shall be made available to persons seeking appointment as notaries public and to other interested persons. (1980, c. 580)

Chapter 3 Powers and Duties

Section 47.1-12 Powers

Each notary shall be empowered to (i) take acknowledgments, (ii) administer oaths, (iii) certify that a copy of any document, other than a document in the custody of a court, is a true copy thereof, (iv) certify affidavits or depositions of witnesses, and (v) perform such other acts as may be specifically permitted by law. (Code 1950, Section 47-2.1-, 1978, c. 621; 1980, c. 580)

Section 47.1-13 Jurisdiction; powers outside the Commonwealth

The powers of any notary commissioned pursuant to this chapter of this title may be exercised anywhere within the Commonwealth of Virginia. Any notary commissioned pursuant to Chapter 2 (Section 47.1-3 et seq.) of this title may likewise perform notarial acts outside the Commonwealth, where such notarial acts are performed in connection with a deed or other writing to be admitted to record in the Commonwealth of Virginia. (Code 1950, Section 47-2. 1; 1978, c. 62 1; 1980, c. 580)

Section 47.1-14 Duty of Care

A notary shall exercise reasonable care in the performance of his duties generally. He shall exercise a high degree of care in ascertaining the identity of any person whose identity is the subject of a notarial act. Unless such person is known by the notary, identity shall be ascertained by examination of one or more of the following documents: A United States Passport, a certificate of United States citizenship, a certificate of naturalization, an unexpired foreign passport, an alien registration card with photograph, a state-issued driver's license, or a state-issued identification card or a United States military card. (1980, C. 580; 2002, c. 379)

Section 47.1-15: Reserved

Section 47.1-16 Notarizations to show date of act, etc.

A. Every notarization shall include the date, upon which the notarial act was performed, and the county or city and state in which it was performed.

B. Upon every writing which is the subject of a notarial act, the notary shall, after his certificate, state the date of the expiration of his commission in substantially the following form:

"My commission expires the ____ day of _____ 20____" (Code 1950, Section 55-116; 1980, c. 580)

Section 47.1-17 Change of name

Any notary duly appointed in this Commonwealth, who shall legally change his name, during his term of office as a notary shall after such change of name, when performing any notarial act, have written or printed in or annexed to his certificate the words:

"I was commissioned a notary as _____," or the equivalent. (Code 1950, Section 55-117; 1973, c. 401; 1980, c. 580)

Section 47.1-18 Notice change of address, etc.

A. Any notary public who changes the address of his residence shall forthwith notify the Secretary of the Commonwealth of the fact by mailing or delivering a written notice, which shall contain his new address.

B. Any notary who is commissioned as a nonresident shall notify the Secretary of any change in his place of employment. (1980, c. 580)

Section 47.1-19 Fees

A. A notary may, for taking and certifying the acknowledgment of any writing, or administering and certifying an oath, or certifying affidavits and depositions of witnesses, or certifying that a copy of a document is a true copy thereof, charge a fee of three dollars.

B. For other services a notary shall have the same fees as the clerk of a circuit court for like services.

C. Any person appointed as a member of an electoral board or a general registrar shall be prohibited from collecting any fee as a notary during the time of such appointment. Any person appointed as an assistant registrar or officer of election shall be prohibited from collecting any fee as a notary for services relating to the administration of elections or the election laws. (1996, c. 219)

D. It shall be unlawful for any notary to charge more than the fee established herein for any notarial act; however a notary may recover, with the agreement of the person to be charged, any actual and reasonable expense of traveling to a place where a notarial act is to be performed if it is not the usual place in which the notary performs his office. (1996, c. 219)

Section 47.1-20 Fee for agreements with employer

A. It shall be lawful for any employer to require a notary in his employment to perform notarial acts in connection with such employment without charging the fee allowed by law for the performance of such acts.

B. It shall not be lawful for any employer to require a notary in his employment to surrender to such employer a fee, if charged, or any part thereof. (1980, c. 580)

Section 47.1-20.1 Validation of certain acts

Oaths of office administered by a notary public on or before July 1, 1982, are hereby deemed to be valid and actions of any public officer taking such oaths are hereby deemed valid. (1983, c. 435)

Chapter 4 Term of Office

Section 47.1-21 Term of Office

The term of office of a notary public shall be four years, except as shall be otherwise provided in this chapter. The term of a notary public shall expire in the fourth calendar year after issuance of his commission on the last day of the month in which the notary was born. (1980, c. 580; 1989, c. 594)

Section 47.1-22 Resignation; removal from Commonwealth; etc.

A. A notary may resign his office by mailing or delivering to the Secretary a letter of resignation.

B. Any notary who ceases to be a resident of the Commonwealth of Virginia, shall, from that time, cease to be a notary; provided, however, that such notary may retain his commission with the written consent of the Secretary if he meets the qualifications for nonresident appointment under Section 47.1-4.

C. Any nonresident notary who ceases to be employed in this Commonwealth shall forthwith cease to be a notary.

D. Every notary who wishes to resign from office, or who ceases to be a notary pursuant to subsections B or C of this section, shall forthwith mail or deliver his commission to the Secretary, who shall cancel the same. (1980, c. 580)

Section 47.1-23 Grounds for removal from office

The Secretary of the Commonwealth may remove from office any notary who:

- 1.** Submits or has submitted an application for commission and appointment as a notary public which contains a substantial and material misstatement of fact;
- 2.** Is convicted or has been convicted of any felony under the laws of the United States or this Commonwealth, or the laws of any other state, unless the notary has been pardoned for such offenses or has had his rights restored;
- 3.** Is found to have committed official misconduct by a proceeding as provided in Chapter 5 (Section 47.1-24 et seq.) of this title;
- 4.** Fails to exercise the powers or perform the duties of a notary public in accordance with this title; provided that if a notary is adjudged liable in any court of this Commonwealth in any action grounded in fraud, misrepresentation, impersonation, or violation of the notary laws of the Commonwealth, such notary shall be presumed removable under this section;
- 5.** Uses false or misleading advertising wherein he represents or implies by virtue of his title to notary public, that he has qualifications, powers, duties, rights, or privileges that he does not possess by law;
- 6.** Is convicted of the unauthorized practice of law pursuant to Section 54.1-3904
- 7.** Refer to Supreme Court Decision of Bernal v. Fainter, 1984; or
- 8.** Becomes incapable of reading or writing the English language. (Code 1950, Section 47-2; 1962, p. 687; 1976, c. 559; 1979, c 14; 1980, c. 580; 1983, c. 435)

Chapter 5 Removal

Section 47.1-24 Removal of notary by administrative process; surrender of commission; penalty

- A.** Whenever the Secretary shall have reason to believe that a notary has been guilty of official misconduct pursuant to this chapter, or is otherwise subject to removal from office, an evidentiary proceeding under the provisions of the Administrative Process Act (Section 2.2-400 et seq.) shall be held.
- B.** Through **D.** [Repealed]
- E.** If the Secretary determines that the notary is guilty of official misconduct or grounds exist for the removal of the notary and his case decision is not thereafter reversed or suspended by a court of law, the Secretary may issue an order removing the notary from office, suspending the notary from office for a period of time not to extend beyond the date of expiration of the notary's commission, or reprimanding the notary.
- F.** Upon being notified that an evidentiary proceeding has been initiated under this section, the notary who is the subject of such a proceeding shall forthwith cease to serve as a notary for a period of sixty days, or until his case has been decided, whichever period shall be shorter. If the Secretary finds that grounds for removal exist, such notary shall be further suspended from serving as a notary until the Secretary has made a final disposition of the case under subsection E of this section; however, no notarial act shall be deemed invalid solely by reason of having been performed by a notary who has been suspended pursuant to this subsection.
- G.** Any notary ordered removed from office under this section shall forthwith mail or deliver his commission to the Secretary, who shall cancel the same. Any notary ordered suspended under this section shall forthwith surrender his commission to the Secretary for the duration of such suspension.
- H.** [Repealed]
- I.** Any notary failing to deliver his commission to the Secretary pursuant to an order of the Secretary under this section shall be guilty of a Class 3 misdemeanor. (Code 1950, Sections 47-2.1 through 47-4.6, 47-4.8; 1972, c. 824; 1978, c. 621; 1979, c. 410; 1980, c. 580; 1983, c. 435)

Chapter 6

Civil and Criminal Liability

Section 47.1-26 Civil liability of notary

A notary public shall be liable for all damages proximately caused by his official misconduct. (Code 1950, Section 47-3; 1972, c. 824; 1980, c. 580)

Section 47.1-27 Civil liability of employer of notary

The employer of a notary public shall also be liable for all damages proximately caused by the official misconduct by such notary if:

1. The notary public was acting within the scope of his employment at the time such damages were caused; and
2. The employer had actual knowledge of, or reasonably should have known of, such notary's misconduct (1980, c. 580)

Section 47.1-28 Willful misconduct a misdemeanor

Any notary who knowingly and willfully commits any official misconduct under Chapter 5 (Section 47.1-24 et seq.) of this title shall be guilty of a Class 3 misdemeanor. (1980, c. 580)

Section 47.1-29 Impersonation of a notary a felony

Any person who shall willfully act as, or otherwise impersonate, a notary public while not lawfully commissioned as a notary public or other official authorized to perform notarial acts, shall be guilty of a Class 6 felony. (1980, c. 580)

Section 47.1-30 Conflicts of Interest

No notary shall perform any notarial act with respect to any document or writing to which the notary or his spouse shall be a party, or in which either of them shall have a direct beneficial interest. A notary nominated as a fiduciary in a will shall not, for that reason alone, be deemed a party to the will or to have a direct beneficial interest therein.

Any notary who violates the provisions of this section shall be guilty of official misconduct.

A notarial act performed in violation of this section shall not automatically be void for such reason, but shall be voidable in the discretion of any court of competent jurisdiction upon the motion of any person injured thereby. (1980, c. 580; 1992, c. 194)

Chapter 7

Out-of-State Commissioners

Section 47.1-31 Appointment; list of commissioners to be published

The Governor shall appoint out of this Commonwealth, and within the United States, or within Puerto Rico, or any other territory subject to the jurisdiction of the United States, or over which the United States exercises authority, so many commissioners for such states, countries, and districts as to him shall seem proper, who shall hold their office, at the pleasure of the Governor, for the term of two years, and he shall, within thirty days after the beginning of each regular session of the General Assembly, communicate to it the names and residence of the persons holding office under such appointment. Lists of such commissioners shall be published with the acts and resolutions of the General Assembly. (Code 1950, Section 47-5; 1980, c. 580)

Section 47.1-32 Fee of Secretary of the Commonwealth

The Secretary of the Commonwealth shall be entitled in each case to receive from the person appointed commissioner as aforesaid a fee of thirty-five dollars for making out and transmitting his commission to him. (Code 1950, Section 47-6; 1980, c. 580; Section 1-20; 2002, c. 899)

Section 47.1-33 Certificate of acknowledgment

A certificate of acknowledgment before any commissioner appointed under this chapter shall be under the form prescribed by Sections 55-113 and 55-120, and shall have like effect for all purpose as a certificate of acknowledgment before and by a notary public. (Code 1950, Section 47-7; 1980, c. 580)

Uniform Recognition of Acknowledgments Act

(NOTE: Other provisions of the Uniform Recognition of Acknowledgments Act not found here may be found in the Code of Virginia.)

Section 55-118.1 “Notarial Act” defined; who may perform notarial acts outside this Commonwealth for use in the Commonwealth

For the purposes of this article, “notarial acts” means acts which the laws and regulations of this Commonwealth authorize notaries public of this Commonwealth to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents. Notarial acts may be performed outside this State for use in this State with same effect as if performed by a notary public of this State by the following persons authorized pursuant to the laws and regulations of other governments in addition to any other person authorized by the laws and regulations of this Commonwealth:

NOTARY PUBLIC HANDBOOK

- (1) A notary public authorized to perform notarial acts in the place in which the act is performed;
- (2) A judge, clerk, or deputy clerk of any court of record in the place in which the notarial act is performed;
- (3) An officer of the foreign service of the United States, a consular agent, or any other person authorized by regulation of the United States Department of State to perform notarial acts in the place in which the act is performed;
- (4) A commissioned officer in active service with the armed forces of the United States and any other person authorized by regulation of the armed forces to perform notarial acts if the notarial act is performed for one of the following or his dependents: a merchant seaman of the United States, a member of the armed forces of the United States, or any other persons serving with or accompanying the armed forces of the United States; or
- (5) Any other person authorized to perform notarial acts in the place in which the act is performed. (1970, c. 719)

Section 55-118.2 Proof of authority of person performing notarial act

- (a) If the notarial act is performed by any of the persons described in paragraphs (1) through (4) of Section 55-118.1, other than a person authorized to perform notarial acts by the laws or regulations of a foreign country, the signature, rank, or title and serial number, if any, of the person are sufficient proof of the authority of a holder of that rank or title to perform the act. Further proof of his authority is not required.
- (b) If the notarial act is performed by a person authorized by the laws or regulations of a foreign country to perform the act, there is sufficient proof of the authority of that person to act if:
 - (1) Either a foreign service officer of the United States resident in the country in which the act is performed or a diplomatic or consular officer of the foreign country resident in the United States certified that a person holding that office is authorized to perform the act;
 - (2) The official seal of the person performing the notarial act is affixed to the document; or
 - (3) The title and indication of authority to perform notarial acts of the person appears either in a digest of foreign law or in a list customarily used as a source of such information.
- (c) If the notarial act is performed by a person other than one described in subsections (a) and (b), there is a sufficient proof of the authority of that person to act if the clerk of a court of record in the place in which the notarial act is performed certifies to the official character of that person and to his authority to perform the notarial act.
- (d) The signature and title of the person performing the act are *prima facie* evidence that he is a person with the designated title and that the signature is genuine. (1970, c. 719)

Section 55-118.3 What person taking acknowledgment shall certify

- (1) The person acknowledging appeared before him and acknowledged he executed the instrument; and
- (2) The person acknowledging was known to the person taking the acknowledgment or that the person taking the acknowledgement had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument. (1970, c. 719)

Section 55-118.4 When form of certificate of acknowledgment accepted

The form of a certificate of acknowledgment used by a person whose authority is recognized under Section 55-118.1 shall be accepted in this Commonwealth if:

- (1) The certificate is in a form prescribed by the laws or regulations of this Commonwealth;
- (2) The certificate is in a form prescribed by the laws or regulations applicable in the place in which the acknowledgment is taken; or
- (3) The certificate contains the words “acknowledged before me” or their substantial equivalent. (1970, c. 719)

Section 55-118.5 Meaning of “acknowledged before me”

The words “acknowledged before me” mean:

- (1) That the person acknowledging appeared before the person taking the acknowledgment;
- (2) That he acknowledged he executed the instrument;
- (3) That, in the case of:
 - (i) A natural person, he executed the instrument for the purposes therein stated;
 - (ii) A corporation, the officer or agent acknowledged he held the position or title set forth in the instrument and certificate, he signed the instrument on behalf of the corporation by proper authority, and the instrument was the act of the corporation for the purpose therein stated;
 - (iii) A partnership, the partner or agent acknowledged he signed the instrument on behalf of the partnership by proper authority and he executed the instrument as the act of the partnership for the purposes therein stated;
 - (iv) A person acknowledging as principal by an attorney-in-fact, he executed the instrument by proper authority as the act of the principal for the purposes therein state;
 - (v) A person acknowledging as a public officer, trustee, administrator, guardian, conservator or other representative, he signed the instrument by proper authority and he executed the instrument in the capacity and for the purposes therein stated; and

NOTARY PUBLIC HANDBOOK

(4) That the person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument or certificate. (1970, c. 719)

Section 55-118.6 Statutory short forms of acknowledgment

The forms of acknowledgment set forth in this section may be used and are sufficient for their respective purposes under any law of this Commonwealth. The forms shall be known as “Statutory Short Forms of Acknowledgment” and may be referred to by that name. The authorization of the forms in this section does not preclude the use of other forms.

(1) For an individual acting in is own right:

State/Commonwealth of _____

County/City of _____

The foregoing instrument was acknowledged before me this (date)
by (name person acknowledged)

(Signature of person taking acknowledgment)

(Title or Rank) (Serial Number, if any)

(2) For a corporation:

State/Commonwealth of _____

City/County of _____

The foregoing instrument was acknowledged before me this (date)
by (name of officer or agent, title of officer or agent) or (name of corporation
acknowledging) a (state or place of incorporation) corporation, on behalf of the
corporation.

(Signature of person taking acknowledgment)

(Title or Rank) (Serial Number, if any)

(3) For a partnership:

State/Commonwealth of _____

City/County of _____

The foregoing instrument was acknowledged before me this (date)
by (name of acknowledging partner or agent), partner (or agent)
on behalf of (name of partnership), a partnership.

(Signature of person taking acknowledgment)

(Title or Rank) (Serial Number, if any)

(4) For an individual acting as principal by an attorney-in-fact:

State/Commonwealth of _____

City/County of _____

NOTARY PUBLIC HANDBOOK

The foregoing instrument was acknowledged before me this (date)
by (name of attorney-in-fact) as attorney-in-fact on behalf of (name of principal).

(Signature of person taking acknowledgment)
(Title or Rank) (Serial Number, if any)

(5) By any public officer, trustee, or personal representative:

State/Commonwealth of _____
City/County of _____
The foregoing instrument was acknowledged before me this (date)
by (name and title of position)

(Signature of person taking acknowledgment)
(Title or Rank) (Serial Number, if any)
(1970, c. 719)

Section 55-120 Acknowledgments on behalf of corporations and others

When any writing purports to have been signed in behalf or by authority or any person or corporation, or in any representative capacity whatsoever, the certificate of the acknowledgment by the person so signing the writing shall be sufficient for the purposes of this and Sections 55-106, 55-113, 55-114 and 55-115, and for the admission of such writing to record as to the person or corporation on whose behalf it is signed, or as to the representative character of the person so signing the same, as the case may be, without expressing that such acknowledgment was in behalf or by authority of such other person or corporation or was in a representative capacity. In the case of a writing signed in behalf or by authority of any person or corporation or in any representative capacity a certificate to the following effect shall be sufficient:

State (or territory or district) of _____, county (or corporation) of _____, to wit: I, _____, a _____ (insert here the official title of the person certifying the acknowledgment) in and for the State (or territory or district) and county (or corporation) aforesaid, do certify that _____ (insert here the name or names of the persons signing the writing on behalf of the person or corporation, or the name of the person signing the writing in a representative capacity), whose name (or names) is (or are) signed to the writing above, bearing date on the _____ day of _____, has (or have) acknowledged the same before me in my county (or corporation) aforesaid. Given under my hand this _____ day of _____. (Code 1919, Section 5207)

Section 55-121 Corporate Acknowledgment taken before officer or stockholder

Any notary or other officer duly authorized to take acknowledgments may take the acknowledgment to any deed or other writing, executed by a company, or to a company or for the benefit of a company, although he may be a stockholder, an officer, or both, in such company; provided he is not otherwise interested in the property conveyed or disposed of by such deed or to the writing; and nothing herein shall be construed to authorize any officer to take an acknowledgment to any deed or other writing executed by such company by and through him as an officer or stockholder thereof, or to him for the benefit of such company. (Code 1919, Section 5209; 1926, p. 340)

Statute Requiring Report of Certain Fees

(NOTE: The following section applies to all notaries regardless of date of commission.)

Section 17.1-270 Officer to state fees, etc., on affidavit, deposition or report

A notary or other officer returning affidavits or depositions of witnesses and a commissioner returning a report shall state at the foot thereof the fees thereof, to whom charged and, if paid, by whom. (Code 1950, Section 14-109; 1964, c. 386; Section 14.1-98; 1998, c. 872)